back on the less pertinent rule of interpretation the court was able to achieve a result which *Matthews* v. *City of Detroit* [21] had, shortly before, indicated was close to its heart, without sacrificing its apparently equally pronounced view on the "well-established rule of exemption of municipal property from general taxation." [22]

J. L. R.

TAXATION

Definition of "Manufacturing" for Differential Valuation Under Ohio Tangible Personalty Tax Law

Taxpayer is engaged in the processing of scrap metal to meet the elaborate specifications of the American Rolling Mill Co., which uses the scrap metal so processed to charge its open hearth furnaces. The processing activity of appellant involves the careful segregation of the various scrap metals acquired, removal of dross, silica, alloy, and paint as required, cutting of the odd scraps into uniform size by mechanical shears, and packing them into compact, uniform bundles with hydraulic presses. Claiming to be a "manufacturer" within the provisions of Ohio General Code Section 5385, the taxpayer listed its personal property in its inventory for taxation at 50% of the true value thereof, as authorized by Section 5388. The tax commissioner, in a determination sustained by the Board of Tax Appeals, denied the classification of a manufacturer and assessed the property at 70% of true value according to the general rule for valuation of personalty. On appeal to the Supreme Court, *held,* reversed; appellant is taxable as a "manufacturer" within the meaning of the code section.[1]

Section 5385, defining a manufacturer to be "A person who purchases, receives, or holds personal property, of any description, for the purpose of adding to the value thereof by manufacturing, refining,

[21] 291 Mich. 161, 289 N. W. 115 (1939), carrying to questionable lengths the Michigan doctrine that evidence of "profit" works legal alchemy on a function normally governmental.

[22] City of Wyandotte v. State Board of Tax Admn., *supra* note 20, at 54, 270 N. W. at 213.

[1] Middletown Iron & Steel Co. v. Evatt, Tax Comm., 139 Ohio St. 113, 38 N. E. (2d) 585 (1941).

rectifying or by the combination of different materials with a view of making a gain or profit by so doing," was originally adopted in 1864 as a definition of those productive concerns whose inventories are required to be averaged for tax purposes.[2] When, in 1931, the legislature, free of the old requirement for uniform taxation of personalty,[3] came to revamp the Ohio *ad valorum* tax provisions, Ohio manufacturers pressed for differential treatment similar to that accorded manufacturers in neighboring states. The concession of a lower taxable percentage of true value was granted on the theory that competitive factors made such a move desirable as a general aid to the state's economic welfare, and that increased values resulting from the favorable treatment thus accorded would afford additional derivative sources of revenue. An existing definition of the general group contemplated being ready at hand, it was adapted to serve as well the new function.

Some assistance in determining the group encompassed by this legislation can be gained from the statutory definitional wording. To be a "manufacturer" one must purchase, receive or hold tangible personalty, and do so for the purpose of adding to its value. A third requisite is that of intent to realize a gain or profit; thus one producing parts for his own machinery is not engaged in manufacturing within Section 5385. But beyond these general requirements is the one that the claimant must be engaged in one or more of the processes named: rectifying, refining, combining of different materials, manufacturing; and the uncertainty in meaning of these terms force resort to extrinsic aids in an attempt to find the legislative intent. The more immediate extrinsic aids to finding legislative intent in Ohio are, however, almost non-existent; for neither committee reports nor journals of legislative debate are to be had. Even were such sources available, they would be of little value in the present situation, for it appears that the legislators intentionally left their purpose loose and general, satisfied to let the administration by the tax authorities and interpretation by the courts set the limits of the statute's application. In the absence of any definitive intention on the part of the legislature, resort must be had either to the common meaning of the terms employed in the statute or to specialized connotations which those terms have developed at the hands of the social or economic group affected

[2] 61 Ohio Laws 90 (1864).
[3] Ohio Const., Art. XII, Sec. 2.

by the legislation. Use of the latter type of reference accords with the newer theory that, legislative intent being a fiction in any event, the most satisfactory source of meaning is to be found in the reflex reaction of those toward whom the legislation is apparently directed.[4] A sociological or functional approach rather than a search of the digests is thus made necessary. The commonly received meaning of terms, on the other hand, can be ascertained by resort to dictionary and judicial definition.

By the latter test, "rectifying" would appear to embrace every process of distillation, refinement, or purification by chemical change; while "refining" would cover processes involving removal of impurities and reduction to an unmixed or pure state. At first blush "combining different materials" appears to raise possibilities of unlimited coverage rather than problems of limitation; yet lurking in the phrase is the difficult question of whether the component materials must lose their identity in order to be "combined." In contrast is the abundance of judicial definition of "manufacturing"; typical is the view that it consists in "the production of articles for use from raw *or* prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor *or* by machinery." [5]

However, in grappling with the definitional issue in the first case to come before it involving the 1931 statute,[6] the Ohio Supreme Court echoed the emphasis of the early *Sohn & Co.*[7] opinion upon the existence of skilled hand labor as the *sine qua non* of manufacturing. That case, *Schumacher* v. *Tax Comm.*,[8] holding machinery used in crushing and screening stone into various merchantable sizes not to be entitled to special treatment, is clearly contrary to the current lay conception of the nature of the manufacturing process as one involving the creation of new form or new qualities by the application of either handicraft or machine technology.[9] A Kentucky decision,[10] recogniz-

[4] Landis, *A Note on Statutory Interpretation* (1940) 43 HARV. L. REV. 886; Radin, *Statutory Interpretation* (1930) 43 *id.* 868.

[5] Franklin-American Laundry and Dry Cleaning Co. v. Tax Comm., 14 Ohio L. Abs. 357 (1932); American Fruit Growers, Inc. v. Urogdex, 283 U. S. 1 (1930).

[6] Schumacher Stone Co. v. Tax Comm., 134 Ohio St., 529, 18 N. E. (2d), 405 (1938).

[7] Engle v. Sohn & Co., 41 Ohio St. 691, 52 Am. Rep. 103 (1885).

[8] 134 Ohio St. 529, 18 N. E. (2d), 405 (1938).

[9] Just as the *Schumacher* opinion emphasized skilled handicraft as necessary to "manufacturing," so some attempt has been made to delimit the type of material acted upon in the manufacturing process to such as is "raw" in the sense that it is in an untouched and natural state. Such an attack is unwarranted in fact, as witnesses the following definition: "Though the term 'raw material' is retained in many definitions of 'manufacture', it denotes merely the material out of which the final product is made. It is obvious that what

ing a stone crushing concern as a manufacturer within the meaning of a statute similar to Ohio's G. C. 5385, is more in accord with the present-day conception. Equally so is the *Schumacher* viewpoint in conflict with industry's idea of the meaning of "manufacturer"; the Ohio Manufacturers' Association includes among its members several companies engaged in stone crushing. On the other hand, should the *Schumacher* decision be left unchallenged as barely without the statutory coverage,[11] nothing in *stare decisis* would require a like result in the principal case. Notwithstanding the views of the Chief Justice and the Board of Tax Appeals, to the operations in the earlier situation are here added activities that would clearly appear to bring the Middletown Co. within at least two of the four processes alternatively named by Sec. 5385.[12] Out-of-state judicial treatment, again from Kentucky,[13] and the opinion of the trade, [14] both point conclusively to the correctness of the judicial decision that taxpayer was entitled to the 50% valuation on its property.

Unnecessary, therefore, was the court's buttressing of its conclusion by putting "the decision in this case upon a broader ground." [15] For in formulating the derivative rule that taxpayer was a manufacturer because the scrap processing in which it is now engaged was formerly a function carried on by the American Rolling Mill as an essential part of its admitted manufacturing enterprise, the court has opened up the statute to parasitical attachment by firms claiming partial exemption because, while in their own immediate activities they are scarcely "manufacturers," as a stage in a vertical industrial pattern they are a part of manufacturing endeavor. Inasmuch as this interpretation would allow the statutory exemption to those denied it

is raw material to one is a finished product to another. To the tanner, leather is a manufactured product, but to the shoemaker it is raw material." People v. Holdridge, 4 Lansing (N. Y.), 511 (1871).

[11] Commonwealth, *ex rel.* Rockcastle v. W. J. Sparks Co., 222 Ky. 606, S. W. (2d), 1050 (1928).

[12] Basis for the decision of the court might be found in a socio-psychological approach to the legislative intent. Viewing G. C. § 6488 as an act motivated by the need to induce manufacturers to come to or remain in Ohio, it is possible that the Ohio court felt that stone crushers were not within the class which would respond to such treatment, that class being limited to productive concerns which are in a position to decide on a situs on the basis of tax conditions, because relatively unrestrained in their choice by the location of raw materials and the profitable scope of their market.

[13] These two are refining, and combining different materials.

[14] David J. Joseph Co. v. City of Ashland, 223 Ky. 203, 3 S. W. (2d), 218 (1928).

[15] The Ohio Manufacturers' Association expressed the opinion that, while the Middletown Iron & Steel Co. is not a member of the association, if it did apply for membership it would be accepted as having all the necessary qualifications.

[16] Middletown Iron & Steel Co., *supra* at 125.

by the *Schumacher* reasoning, the court's action may possibly represent a *sub silentio* repudiation of its earlier construction of Sec. 5385. Such repudition, it is true, would be unnecessary for the stone crushing concerns themselves, for they had meanwhile found relief in the legislature. By the 1939 amendment of Sec. 5388, not only they, but farmers and towel and linen suppliers as well, had gained the 50% rate.[16] This followed by some years similar legislative relief[17] from unfavorable lower court judgment[18] as to the nature of the operations of laundries and dry cleaners; and preceded by a biennium the 1941 addition of Sec. 5388-5,[19] which anticipatorily does the same for rural electric cooperatives. Indeed, in these repeated legislative expressions of dissatisfaction with the judicial handling of the problem may be found the cue to the Supreme Court's present gratuitous *dictum*. For, although technically they involve no effort to define as "manufacturing" the activities of the named businesses, there is manifest in them as a legislative intent that Sec. 5385 enjoy a liberal interpretation. Very possibly, therefore, it was to avoid the unsatisfactory alternative of likely continued legislative patch-work that the court went beyond the requirement of the case before it to put its decision on a "broader ground," hoping thereby to impute into the definitional section an acceptable basis for administration of this important aspect of Ohio's taxation of tangible personalty.

W. C. D.

Treatment of Credits Uuder Ohio Intangible Tax Laws—Advance Payments Not Accounts Payable

Taxpayer, a manufacturer of machinery on special order, requires its customers to advance monies before delivery. In returning its personal property for Ohio taxation, taxpayer claimed a deduction of such advances from its "credits" under Ohio Gen. Code Sec. 5327, the controlling portion of which reads: "The term credits as so used, means the excess of the sum of all current accounts receivable and prepaid items used in business when added together estimating every such account and item at its true value in money, over and above the sum of current accounts payable of the business, other

[16] 118 Ohio Laws 609.
[17] 115 Ohio Laws 564.
[18] Laundry and Cleaning Co. v. Tax Comm., 30 N.P. (N.S.) 25, *aff'd*, 14 Ohio L. Abs. 357 (1932).
[19] 119 Ohio Laws 215.